Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Application by Verizon New England, Inc.,	)	
Bell Atlantic Communications, Inc. (d/b/a	)	CC Docket No. 02-61
Verizon Long Distance), NYNEX Long Distance	)	
Company (d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and Verizon Select	)	
Services Inc., for Authorization to Provide In-	)	
Region, InterLATA Services in Maine	)	

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

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COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. opposes the above-captioned application of Verizon for authorization to provide in-region, interLATA services in Maine.[1] The public interest requires that the application be denied unless the Commission is convinced that the local markets have been opened fully and irreversibly to competitive entry. In Sprint's view, this is not yet the case.

I. INTRODUCTION AND SUMMARY

A key purpose of the 1996 amendments to the Communications Act of 1934 (the Act) was to open the local market to competition. To that end, Congress envisioned three avenues of local entry: resale, use of incumbent LEC unbundled network elements and facilities-based competition; and it placed incumbent LECs in the rather unnatural role of

[1] Application by Verizon New England for Authorization to Provide In-Region, InterLATA Services in Maine, CC Docket No. 02-61 (filed March 21, 2002) (Application).

assisting their would-be competitors by imposing the interconnection, resale, unbundling and collocation obligations of § 251(c).

To encourage the principal ILECs – the BOCs – to cooperate in this process, Congress enacted the "carrot" of § 271, giving the BOCs the right to enter the interLATA long distance market in-region once their local markets were truly open. The Commission recognized the importance of local market competition in one of the first applications it decided under this section.

> Although Congress replaced the MFJ's structural approach, Congress nonetheless acknowledged the principles underlying that approach that BOC entry into the long distance market would be anticompetitive unless the BOCs' market power in the local market was first demonstrably eroded by eliminating barriers to local competition. *** In order to effectuate Congress' intent, we must make certain that the BOCs have taken real, significant and irreversible steps to open their markets. We further note that Congress plainly realized that, in the absence of significant Commission rulemaking and enforcement, and incentives all directed at compelling incumbent LECs to share their economies of scale and scope with their rivals, it would be highly unlikely that competition would develop in local exchange and exchange access markets to any discernable degree.[2]

If the BOCs are allowed to enjoy the § 271 "carrot" before local competition is fully established, they will have little incentive to cooperate with competitive LECs thereafter, unless they are subject to continuing regulation. Successfully maintaining such a regulatory structure and adapting it to changes in technology will require significant on-going resources of both the Commission and interested parties, with, at best, uncertain results. It would be far preferable to withhold the § 271 "carrot" until local competition

[2] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543, ¶18 (1997) (Michigan Order).

is sufficiently entrenched that competitive forces can supplant the intensive regulation and enforcement that otherwise would be required. Sprint does not believe that point has yet been reached in Maine.

In its application, Verizon states that it "disagrees as a legal matter that the Commission may conduct any analysis of local competition in its public-interest inquiry. Under the terms of the Act, the public-interest inquiry should focus on the market to be entered: the long distance market."[3] The recent decision of the Court of Appeals for the District of Columbia concerning the FCC's grant of SBC's 271 application for long distance service in Kansas and Oklahoma remanding the "price squeeze" issue[4] disproves Verizon's interpretation of the Act. The appellants argued that the low volume of residential customers in these states and SBC's pricing which does not provide enough margin to make competition profitable are evidence of a "price squeeze" that is inconsistent with the public interest. In commenting on the Commission's inadequate consideration of the appellants' claim, the court stated: "Here, as the Act aims directly at stimulating competition, the public interest criterion may weigh more heavily towards addressing potential 'price squeeze.'" Id. at 555. Clearly, the court considers the Act's goal of "stimulating competition" to refer to competition in the local market, which is the market affected adversely by a "price squeeze," not the long distance market. Thus, it is appropriate to consider whether the dismal state of competition and the low volume of

[3] Application, page 82, footnote 72.

[4] Joint Application by SBC for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237 (2001), remanded, Sprint Communications Co. L.P. v. FCC, 274 F. 3d 549 (DC Cir. 2001).

residential customers served by facilities-based competitors is in the public interest when evaluating a 271 application.

As shown below, the CLEC industry is in a state of crisis, and the RBOCs have failed to establish themselves outside their territory. In Maine, the fact that CLECs provide service to less than one percent of residential customers in Verizon's territory using all three entry modes indicates that residential competition has not been firmly established.

II. THE CLEC INDUSTRY IS IN A STATE OF CRISIS (PUBLIC INTEREST)

The past year has been marked by the bankruptcy of many of the CLECs that were in the vanguard of the industry: Covad, e-Spire, NorthPoint, Rhythms, Teligent, WinStar and Convergent, to name a few.[5] Most recently, on November 16, 2001, Net2000 filed voluntary petitions for relief under Chapter 11 and agreed to sell substantially all of its assets to Cavalier Telephone,[6] and on January 31, 2002, McLeodUSA filed for bankruptcy.[7] It comes as no surprise that a Morgan Stanley analyst recently released a "dismal report" about the state of the CLEC industry,

[5] For a more complete list of CLECs that have filed for bankruptcy, *see* Comments of Sprint Communications Company L.P., In the Matter of Joint Application by BellSouth Corporation, Inc., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277, filed October 19, 2001, p. 6. Covad emerged from bankruptcy on December 20, 2001.

[6] NET2000 Communications Inc (NTKK) Form 8-K, http://biz.yahoo.com/e/011121/ntkk.html.

[7] McLeodUSA Press Room, "McLeodUSA Reaches Agreement with Bondholder Committee." http://www.mcleodusa.com/html/ir/singleStory.php3?pid=158&type=press.

identifying several specific local carriers as likely candidates for formal restructuring.[8] In this regard, it was recently reported that XO Communications recently laid off 600 employees, approximately 8 percent of its workforce[9] and may shortly be filing for bankruptcy.[10]

With CLECs under these severe financial difficulties, investors have unambiguously indicated that they will remain wary of CLEC stocks until it becomes clearer "which CLECs will survive the carnage."[11] Industry experts agree that when the smoke clears from "the steady stream of Chapter 11 filings in the competitive telecom sector" only a few CLEC companies will remain.[12] In the meantime, the bleak state of the industry is making it extremely difficult for the surviving CLECs to obtain capital to expand their facilities. Given the high risk associated with the CLEC industry, any financing that can be obtained will come at a high price.

[8] Morgan Stanley: XO "Likely" to Restructure, Washtech.com, Brendan Barrett (October 9, 2001).

[9] XO Communications Lays Off 600; CLEC-Planet, Wayne Kawamoto (October 3, 2001).

[10] XO Communication expects to file for bankruptcy—report, Reuters, Yahoo! Finance (February 21, 2002). http://biz.yahoo.com/rf/020221/n21294701_1.html.

[11] Telecom Services – Local: Hoexter's Broadband Bits, Merrill Lynch Capital markets, K. Hoexter, at *1 (June 18, 2001).

[12] Telecom Services – Alternative Carriers: Competition Telecom, Morgan Stanley, Dean Witter, P. Kennedy, at *1 (June 19, 2001).

CLECs also face regulatory uncertainty concerning the availability and pricing of UNE-P facilities. In a Notice of Proposed Rulemaking released December 20, 2001,[13] the FCC is undertaking a thorough review of its UNE policies in its triennial review as specified in its UNE Remand Order. Id. ¶ 1. Specifically, the FCC will review the application of the "necessary" and "impair" standard and evaluate whether its unbundling analysis "should expressly consider the Act's goal of encouraging the deployment of advanced telecommunications capability." Unbundling NPRM, ¶ 22. It will also consider a more targeted approach to defining UNEs, such as by specific service or geographic location. Id. ¶ 35. Finally, the FCC will review "the proper roles of state commissions in the implementation of unbundling requirements for incumbent LECs." Id. ¶ 75. Thus, the future of UNEs is uncertain, and CLECs face the distinct possibility that some of the UNEs that they currently use will be eliminated as a result of this review.

Also adding to uncertainty surrounding the CLEC industry is the continued litigation about the appropriate pricing standard for UNEs. The Supreme Court is considering whether the TELRIC pricing standard should be used, as advocated by the FCC and the competitive industry, or whether UNE rates should be based on historical

[13] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Notice of Proposed Rulemaking (FCC 01-361) (Unbundling NPRM), ¶ 1.

costs, as the RBOCs contend.[14] A change in the pricing standard could result in higher UNE prices, which could further deteriorate the CLECs' financial situation.

Today's crisis in the CLEC industry, the high cost of capital, and the current regulatory uncertainties place severe constraints on the CLECs. They are unlikely to obtain a significant amount of new financing or to pursue a business strategy which includes increasing their percentage of facilities-based lines.

III. OUT OF REGION RBOCs HAVE FAILED TO COMPETE AGAINST FELLOW RBOCs (PUBLIC INTEREST)

ILECs have chosen not to compete with each other for customers outside their territories. Why would this be the case? ILECs not only know the local market, but they come equipped with the complex back-office systems needed to provide service efficiently and economically. It is telling, then, that despite earlier assertions to the contrary, the RBOCs have remained largely outside the local competition fray. If local competition were truly enabled, these RBOCs, who are high on the learning curve for the provision of local service, would have the incentive to enter the local markets outside their serving territories with bundles of local and long distance service.

In its recent order approving Verizon's Section 271 application for Rhode Island, the Commission found that the lack of entry by other carriers – either out-of-region

[14] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15400 (1996), aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997) and Iowa Utils. Bd., 525 U.S. 366 (1999), on remand, Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), petitions for writ of certiorari granted, Verizon Communications Inc. v. FCC, 121 S. Ct. 877, 878 (2001).

RBOC or CLEC – can be explained by factors beyond the control of the applicant, "such as a weak economy, individual competing LEC and out-of-region BOC business plans, or poor business planning by potential competitors."[15] This suggests that the Commission believes that the public interest considerations should only include factors within the control of the applicant. Sprint disagrees. In Sprint's view, consideration of the public interest should include all factors, whether or not they are within the applicant's control, that bear on whether the local market has indeed been irreversibly opened. The fact that the carriers which are best prepared to enter the local markets are not even attempting to do so in any market outside their local territories is indicative of some deterrent to entry and should give the Commission pause as it considers whether or not the market is fully and irreversibly enabled.

Perhaps Sprint's experiences can shed some insight into why ILECs have not chosen to compete. Despite its own extensive experience in the local markets as an incumbent LEC with over 8 million access lines, Sprint has no significant CLEC operations today. On the contrary, Sprint has cut back significantly on its previously planned CLEC activities. Over one year ago, Sprint abandoned its local market entry via resale or UNE-P altogether. After efforts to establish local service in selected major markets in Georgia, New York, Texas and California, Sprint determined that entry

[15] In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, CC Docket No. 01-324, Memorandum Opinion and Order, released February 22, 2002, ¶ 106 (Rhode Island Order).

through either of these means could not be profitable, even taking into account its ability to retain long distance customer accounts. In late 2000, Sprint stopped accepting new residential customers for local service in these markets. It no longer has any residential customers in either Georgia or New York, and only a few remain in California and Texas.

In October 2001, Sprint announced the discontinuance of its Sprint ION residential and business offerings. Sprint had viewed Sprint ION as a breakthrough, integrated offering that promised to give consumers a superior alternative to the local offerings of ILECs. However, after extensive testing, including commercial offering of the service in a number of states, Sprint determined that it could not economically justify continuation or expansion of the service.

Among the factors contributing to Sprint's decision to withdraw from the local market was the difficulty of obtaining the "last mile" facilities needed for the service from the RBOCs. No Bell Company has found it to be in its own interest to cooperate in establishing local competition. Thus, at every turn, there are lengthy delays, inadequate provision of service, and high prices.[16]

[16] On January 23, 2002, following a two-year investigation, the New York State Public Service Commission (NY PSC) ordered Verizon to lower its UNE prices by as much as 40 percent to promote local competition. In announcing the reduction, Chairman Maureen O. Helmer stated: "Accurate pricing of wholesale service is absolutely critical to the development of facilities-based as well as unbundled network element-based competition in the local phone market. The wholesale price reductions approved today reflect a reasonable balancing of interests and should promote more choices and better pricing of local telephone service for both residential and business customers." Press Release, "Commission Votes to Reduce Verizon's Whole Rates, Significant Reductions Will Foster More Robust Competition and Lower Phone Rates," http://www.dps.state.ny.us/fileroom/doc11086.pdf. Such high UNE prices are detrimental to the financial viability of CLECs attempting to enter the market.

Due to the delays and failure of the Bell Companies to provide service, as well as the regulatory and legislative uncertainties regarding the future availability of facilities, discussed above, carriers have no assurance about the level of future rates or the availability of services and service elements. Making business decisions to expend massive amounts of capital is, in the face of such uncertainties, very risky.

IV. RESIDENTIAL COMPETITION IN MAINE HAS NOT BEEN FIRMLY ESTABLISHED (PUBLIC INTEREST)

As noted above, the Act allows competitors to enter the local market via three entry strategies: resale of the incumbent's network, the use of unbundled network elements, or interconnection to the incumbent's network by pure facilities-based providers, or some combination thereof. The Commission has found that all three means of entry should be available:

> Congress did not explicitly or implicitly express a preference for one particular strategy, but rather sought to ensure that all procompetitive entry strategies are available. Our public interest analysis of a section 271 application, consequently, must include an assessment of whether all procompetitive entry strategies are available to new entrants.

Michigan 271 Order ¶387. In discussing how it would evaluate whether all strategies are available, the Commission made clear that there should be competition in each means of providing competitive local service and to both business and residential customers:

> The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof), in different geographic

> regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large).

Id. ¶391.

In its Rhode Island Order, the Commission states that the public interest standard does not require it to "consider the market share of each entry strategy for each type of service." ¶ 104. However, the public interest standard does require that local competition be healthy and sufficient to endure after RBOC entry. Low levels of facilities-based competition, particularly in the residential market, should signal that competitors are unwilling or unable to make a sizeable investment in the market. If competition is not fully and irreversibly enabled in that market, the RBOC will retain its monopoly control over residential customers, and its entry into the long distance market will not serve the public interest.

Although Verizon claims that meaningful competition exists, competition in the residential market is *de minimis*. In this application, Verizon estimates that of the 2,800 CLEC residential lines in Maine, only 260 were facilities-based as of December 2001. Sprint estimates that the 2,800 residential lines represent approximately 0.65 percent of Verizon's residential lines in Maine, and the 260 facilities-based lines represent approximately 0.06 percent.[17] Percentages of less than one percent indicate that

[17] In Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, August 2001, Table 8.2, the number of "Bell Company Loops" for Maine (718,057) represents 83.3% of the "Total Loops" for Maine (861,935). In the FCC's Statistics of Communications Common Carriers, 2000/2001 Edition, Table 2.4, the number of "Residential Access Lines – Analog" was 519,888 as of December 31, 2000. Assuming that 83.3% of these lines were provided by Verizon, Verizon would have had approximately 433,067 residential lines. 2,800 lines represent approximately 0.65% of the 433,067 lines, and 260 approximately 0.06%.

competitors are not willing to make a sizeable investment in the residential market and that competition in this market has not been fully and irreversibly enabled.

V. CONCLUSION

Because Verizon has failed to demonstrate that there is meaningful competition in Maine, its application for § 271 relief should be denied.

Respectfully submitted,

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April 10, 2002

CERTIFICATE OF SERVICE

I, Sharon Kirby, do hereby certify that this 10th day of April 2002 copies of the Comments of Sprint Communications Company L.P. on the Application by Verizon New England Inc. or Section 271 Authorization to Provide In-Region, InterLATA Service in Maine, CC Docket No. 02-61, will be delivered as indicated below to the following parties:

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